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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Cristi C Kauffman,

10 Plaintiff,

11 v.

12 Michael P Kauffman, Sally M Colton,  
13 Cordell Law LLP, Trans Union LLC, and  
TransUnion Interactive Incorporated,

14 Defendants.  
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No. CV-17-04463-PHX-DGC

**ORDER**

17 Plaintiff Cristi Kauffman brought this action against her former husband, Michael  
18 Kauffman, his former counsel in their disputed state family-law case, Trans Union LLC,  
19 and Trans Union's wholly owned subsidiary, TransUnion Interactive Incorporated  
20 ("TUI"), after Mr. Kauffman allegedly obtained credit-monitoring services under  
21 Plaintiff's name through Trans Union and TUI. Doc. 1. Trans Union moved to dismiss  
22 on January 9, 2018, but the Court granted Plaintiff's request for leave to amend and  
23 denied the motion as moot. Doc. 36. Plaintiff filed a first amended complaint ("FAC")  
24 (Doc. 37), and Trans Union now moves to dismiss the FAC (Doc. 44). The motion is  
25 fully briefed, and no party requests oral argument. Docs. 52, 53. For the reasons  
26 explained below, the Court will grant Trans Union's motion.  
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1     **I.     Background.**

2             For purposes of this motion, Plaintiff’s factual allegations are accepted as true.  
3     *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Plaintiff and Mr. Kauffman divorced in  
4     January 2017. Doc. 37 ¶ 29. Plaintiff alleges that during the course of their subsequent  
5     family-law proceeding in Maricopa County Superior Court, Mr. Kauffman “obtained two  
6     consumer reports on [Plaintiff] under false pretenses from [Trans Union] through its  
7     wholly owned subsidiary [TUI]” and provided the reports to his attorney “for purposes  
8     outside the scope of permissible purposes” under the Fair Credit Reporting Act  
9     (“FCRA”), 15 U.S.C. § 1681 et seq. *Id.* ¶¶ 1, 32.

10            The reports, attached to the complaint but heavily redacted (Doc. 37-1 at 2-45),  
11     were obtained through <https://membership.tui.transunion.com> on September 9, 2017,  
12     under the heading “Credit Monitoring” and subheading “Credit Report.” The reports  
13     begin with an “Account Summary,” which includes Plaintiff’s credit score, balances,  
14     payments, number of open and closed credit accounts, inquiries, and other similar  
15     information. Doc. 37-1 at 2, 8. The reports also contain a “Personal Information”  
16     section, which includes Plaintiff’s name, date of birth, current and previous addresses,  
17     and current and previous employers. *Id.* at 3, 9. The remainder of each report provides  
18     details regarding each of Plaintiff’s accounts, inquiries, and public records. *Id.*  
19     at 3-7, 9-45.

20            The attorney used the reports “in evaluating and defending” Mr. Kauffman’s  
21     position in the family law matter. *Id.* ¶ 36. Plaintiff first learned of the reports when they  
22     were turned over to her attorney with Mr. Kaufman’s disclosure statement. *Id.* ¶ 39.  
23     Plaintiff was “emotionally upset” when she learned of the reports, and she worried that  
24     Mr. Kauffman obtained them partly for the purpose of locating and stalking her. *Id.* ¶ 71.  
25     Plaintiff went to Trans Union’s website and contacted the customer service hotline. *Id.*  
26     ¶ 41. After two phone calls, Trans Union agreed that Mr. Kauffman’s access was  
27     unauthorized, blocked his access, and froze the account. *Id.* ¶¶ 41-51. A few days later,  
28     Plaintiff received two letters – one from “TransUnion LLC” and one from “TransUnion

1 Interactive” – confirming the phone calls and the suspicious activity on her account. *Id.*  
2 ¶¶ 55-57; Doc. 37-1 at 47, 49-50.

3 Plaintiff alleges that Trans Union and TUI “failed to use proper care to assure that  
4 it was [Plaintiff] who was setting up the credit monitoring service, rather than an  
5 imposter.” Doc. 37 ¶ 72. She further alleges that Trans Union and TUI “are alter egos of  
6 one another” and “worked in conjunction to provide the reports to” Mr. Kauffman. *Id.*  
7 ¶¶ 68-70. Finally, Plaintiff asserts that Trans Union and TUI provided a “consumer  
8 report” to Mr. Kauffman “without a permissible purpose allowed under the FCRA.” *Id.*  
9 ¶ 74.

## 10 **II. Legal Standard.**

11 A successful motion to dismiss under Rule 12(b)(6) must show either that the  
12 complaint lacks a cognizable legal theory or fails to allege facts sufficient to support its  
13 theory. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). A  
14 complaint that sets forth a cognizable legal theory will survive a motion to dismiss as  
15 long as it contains “sufficient factual matter, accepted as true, to ‘state a claim to relief  
16 that is plausible on its face.’” *Iqbal*, 556 U.S. at 678 (2009) (citing *Bell Atl. Corp. v.*  
17 *Twombly*, 550 U.S. 544, 570 (2007)). A claim has facial plausibility when “the plaintiff  
18 pleads factual content that allows the court to draw the reasonable inference that the  
19 defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678 (citing *Twombly*,  
20 550 U.S. at 556). “The plausibility standard is not akin to a ‘probability requirement,’  
21 but it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Id.*

## 22 **III. Discussion.**

23 Plaintiff asserts three claims against Trans Union: (1) negligent and (2) willful  
24 violation of 15 U.S.C. § 1681b(a), and (3) common law invasion of privacy. Doc. 37  
25 ¶¶ 84-104. Trans Union argues that the first two claims fail because Plaintiff has not  
26 alleged facts showing a “consumer report” was involved, and the third claim fails because  
27 it is preempted by the FCRA. Doc. 44.

1           **A.     Section 1681b(a).**

2           The FCRA requires that a consumer reporting agency (“CRA”) have a  
3 “permissible purpose” for furnishing a “consumer report.” 15 U.S.C. § 1681b(a); *TRW,*  
4 *Inc. v. Andrews*, 534 U.S. 19, 23 (2001). Section 1681b provides an exhaustive list of the  
5 permissible purposes. *See Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1545 (2016). Trans  
6 Union concedes that it is a CRA. Doc. 44 at 1.

7           To state a § 1681b claim against Trans Union, Plaintiff must allege facts showing  
8 that Trans Union furnished a “consumer report” without a permissible purpose. *See* 15  
9 U.S.C. § 1681b(a); *Rosco v. Experian Info. Sols.*, No. 2:15-CV-325-RMP, 2017 WL  
10 6061977, at \*7 (E.D. Wash. Dec. 7, 2017). Additionally, Plaintiff must allege that Trans  
11 Union acted negligently or willfully. 15 U.S.C. §§ 1681n, 1681o; *see also Guimond v.*  
12 *Trans Union Credit Info. Co.*, 45 F.3d 1329, 1333 (9th Cir. 1995) (“The FCRA does not  
13 impose strict liability[.]”).

14           Trans Union argues that the Court need not analyze the issues of permissible  
15 purpose or its culpability because Plaintiff has failed to allege that Trans Union furnished  
16 a “consumer report” at all. Doc. 44 at 4. The FCRA states:

17           The term “consumer report” means any written, oral, or other  
18 communication of any information by a [CRA] bearing on a consumer’s  
19 credit worthiness, credit standing, credit capacity, character, general  
20 reputation, personal characteristics, or mode of living which is used or  
21 expected to be used or collected in whole or in part for the purpose of  
22 serving as a factor in establishing the consumer’s eligibility for --

23                   (A) credit or insurance to be used primarily for personal, family, or  
24 household purposes;

25                   (B) employment purposes; or

26                   (C) any other purpose authorized under section 1681b of this title.

27           15 U.S.C. § 1681a(d).

28           Trans Union argues that, other than a bare restatement of the statutory language,  
Plaintiff has not alleged that the reports at issue were “used or expected to be used or

1 collected” for the purpose of establishing Plaintiff’s eligibility for credit, insurance, or  
2 employment, and therefore are not consumer reports. Doc. 44 at 5-6. Trans Union  
3 argues that the reports are “consumer disclosures” made by the CRA to the consumer,  
4 governed by § 1681g. *Id.* Trans Union explains: “if the credit information is requested  
5 by the consumer, it is a consumer disclosure,” but if “the credit information is requested  
6 by a third party to determine eligibility for credit, employment or insurance[,] it is a  
7 consumer report.” *Id.* at 6; Doc. 53 at 4 (citing *Sgouros v. Transunion Corp.*, No. 14 C  
8 1850, 2016 WL 4398032, at \*4 (N.D. Ill. Aug. 18, 2016)).

9 Some circuits have interpreted § 1681a(d) to require disclosure of the information  
10 to a third party. *See Wantz v. Experian Info. Sols.*, 386 F.3d 829, 833-34 (7th Cir. 2004)  
11 (“There is no consumer report unless there is a ‘communication . . . for the purpose of  
12 serving as a factor in establishing the consumer’s eligibility for’ credit or other statutorily  
13 enumerated purposes; i.e., there cannot be a consumer report without disclosure to a third  
14 party.”) (internal citation omitted), *abrogated on other grounds by Safeco Ins. Co. of Am.*  
15 *v. Burr*, 551 U.S. 47 (2007); *Collins v. Experian Info. Sols., Inc.*, 775 F.3d 1330, 1335  
16 (11th Cir. 2015) (“A ‘consumer report’ requires communication to a third party, while a  
17 ‘file’ does not.”); *Eller v. Trans Union, LLC*, 739 F.3d 467, 474 (10th Cir. 2013)  
18 (defining a consumer report as “a communication of credit information to a third party”).  
19 District courts in this circuit have also applied such an interpretation. *See Liberi v. Taitz*,  
20 No. SACV 11-0485 AG AJWX, 2012 WL 10919114, at \*5 (C.D. Cal. Mar. 16, 2012).  
21 Under this view, Plaintiff’s § 1681b claim would fail because she does not allege Trans  
22 Union collected the reports for disclosure to a third party.

23 But two cases suggest the Ninth Circuit might disagree with an interpretation  
24 requiring disclosure to a third party. *See Comeaux v. Brown & Williamson Tobacco Co.*,  
25 915 F.2d 1264 (9th Cir. 1990); *Guimond*, 45 F.3d 1329. In a case addressing the proper  
26 interpretation of § 1681a(d), the court of appeals held:

27 The plain language of section 1681a(d) reveals that a credit report will be  
28 construed as a “consumer report” under the FCRA if the [CRA] providing  
the information *expects* the user to use the report for a purpose permissible

1 under the FCRA, without regard to the ultimate purpose to which the report  
2 is *actually* put. Thus, if the user of the report led the agency preparing the  
3 credit report to believe, either through commission or omission, that the  
4 report was to be used for a consumer purpose such as for an employment  
purpose, the report *is* a consumer report within the meaning of the FCRA.

5 *Comeaux*, 915 F.2d at 1273-74 (internal citations omitted) (emphasis in original). Thus,  
6 as long as the CRA furnishes the report “based on a reasonable expectation” that it will  
7 be used for a listed purpose, it is irrelevant that the person obtaining the report does not  
8 intend to use it for a listed purpose. *Id.* at 1274; Doc. 52 at 3.

9 In *Guimond*, the Ninth Circuit considered whether a plaintiff must allege  
10 disclosure to a third party to succeed on a claim under § 1681e(b). 45 F.3d at 1332-34.  
11 That section requires a CRA to use reasonable procedures to ensure accuracy when it  
12 “prepares a consumer report.” 15 U.S.C. § 1681e(b). The plaintiff in *Guimond* did not  
13 allege that the report was given to a third party or that she was denied credit as a result of  
14 its inaccuracies. The court of appeals held that a cause of action based on a CRA’s  
15 failure to follow reasonable procedures to ensure the accuracy of the information it  
16 collects does not require transmission of the information to a third party, and can include  
17 damages based on emotional distress and humiliation. 45 F.3d at 1333. The case did not  
18 address the requirements for a violation of § 1681b, nor the meaning of a consumer  
19 report.

20 In light of these cases, the Court is reluctant to follow the approach of other  
21 circuits that require disclosure to a third party as part of the definition of a “consumer  
22 report.” But even if the Court assumes that disclosure to a third party is not required,  
23 Plaintiff has failed to establish that Trans Union furnished a consumer report under the  
24 standard set forth in *Comeaux*.

25 Plaintiff asserts, without explanation, that “[a]ll or nearly all of the information in  
26 the report[s] was collected by Trans Union with the expectation that it would be used or  
27 collected in whole or in part for establishing eligibility for credit, insurance, employment,  
28 [or] other purposes authorized by 15 U.S.C. § 1681b.” Doc. 52 at 2-3. Plaintiff further

1 argues that “[c]learly, this information was collected by Trans Union with the expectation  
2 of transmission to a third party[.]” *Id.* at 3. But Plaintiff provides no facts suggesting  
3 that Trans Union had a reasonable expectation that the reports would be used for a listed  
4 purpose or collected the information contained in the reports for a listed purpose.

5 The FAC alleges that Mr. Kauffman obtained the reports by fraudulently posing as  
6 Plaintiff, apparently through an online consumer portal. Doc. 37 ¶ 90; Doc. 37-1 at 2-38.  
7 The FAC does not explain why, from Trans Union’s perspective, a consumer’s request  
8 for information regarding her own credit would give rise to a reasonable expectation that  
9 the information would be used for a listed purpose. Plaintiff does not allege that Mr.  
10 Kauffman requested the reports under the pretext of a permissible purpose – let alone  
11 identify which permissible purpose. The FAC’s legal conclusions that the reports are  
12 “consumer reports” and were “used or expected to be used or collected in whole or in part  
13 for the purpose of serving as a factor in establishing eligibility for credit or insurance or  
14 employment purposes,” unsupported by any specific factual allegations, do not suffice.  
15 *See* Doc. 37 ¶¶ 34-35; *Iqbal*, 556 U.S. at 678.<sup>1</sup>

16 Plaintiff has not alleged sufficient facts to allow the Court reasonably to infer that  
17 Trans Union furnished a “consumer report” as defined in § 1681a(d) in violation of  
18 § 1681b. The FAC does not clearly articulate the circumstances under which the reports

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19 <sup>1</sup> Although the parties did not raise the issue, the Court notes that a 40 year old  
20 Ninth Circuit opinion could be read to suggest that mere “collection” of any consumer  
21 information by a CRA is enough to make the information a consumer report. *See Hansen*  
22 *v. Morgan*, 582 F.2d 1214, 1218 (9th Cir. 1978) (“And unless the [CRA] was generally  
23 collecting such information for purposes not permitted by the FCRA, it must have  
24 collected the information in the report for use consistent with the purposes stated in the  
25 act.”); *see also Ippolito v. WNS, Inc.*, 864 F.2d 440, 452-53 (7th Cir. 1988); *St. Paul*  
26 *Guardian Ins. Co. v. Johnson*, 884 F.2d 881, 884-85 (5th Cir. 1989); *Heath v. Credit*  
27 *Bureau of Sheridan, Inc.*, 618 F.2d 693, 696 (10th Cir. 1980). The Ninth Circuit did not  
28 rely solely on this “collection” rationale in finding a consumer report in *Hansen*, and it  
did not mention this idea in its more recent case, *Comeaux*. The idea also seems  
inconsistent with *Comeaux*’s holding that a Plaintiff must show that a CRA had a  
“reasonable expectation” that information would be used for a listed purpose. A broad  
reading of *Hansen* would mean that any consumer information a CRA communicates to  
anyone for any purpose is a consumer report under § 1681a(d). This idea is contrary to  
more recent case law and to the FCRA generally, which specifically defines consumer  
reports and distinguishes them from other information a CRA might furnish. *See Trans*  
*Union Corp. v. F.T.C.*, 81 F.3d 228, 231-32 (D.C. Cir. 1996); 15 U.S.C. § 1681g  
(referring to a CRA’s disclosure of a consumer’s “file”). The Court declines to adopt this  
broad reading on the basis of one ambiguous sentence in *Hansen*.

1 were obtained, and Plaintiff's briefing on this motion fails to clarify exactly what her  
2 legal theory is.

3 **B. Invasion of Privacy.**

4 Trans Union argues that Plaintiff's common law invasion-of-privacy claim is  
5 expressly preempted by the FCRA. Doc. 44 at 6 (citing 15 U.S.C. § 1681h(e)).  
6 Section 1681h(e) specifically addresses invasion of privacy:

7 [N]o consumer may bring any action or proceeding in the nature of  
8 defamation, invasion of privacy, or negligence with respect to the reporting  
9 of information against any [CRA], . . . based on information disclosed  
10 pursuant to section 1681g, 1681h, or 1681m of this title, . . . except as to  
11 false information furnished with malice or willful intent to injure such  
12 consumer.

13 15 U.S.C. § 1681h(e). Plaintiff argues that she should be permitted to assert invasion of  
14 privacy as an alternative claim in the event the FCRA does not apply. Doc. 52 at 4. The  
15 Court does not agree.

16 Although Plaintiff's FCRA claims against Trans Union fail for the reasons  
17 discussed above, the FCRA nonetheless governs the conduct alleged. A CRA's  
18 communication with and disclosure of information to a consumer is certainly regulated  
19 by the FCRA. *See, e.g.*, 15 U.S.C. §§ 1681g-k. And the FCRA expressly preempts  
20 common law claims for invasion of privacy based on a CRA's disclosure of information  
21 pursuant to §§ 1681g (consumer disclosures) or 1681h (additional requirements regarding  
22 consumer disclosures, including that a CRA must require a consumer to "furnish proper  
23 identification" before making disclosures). 15 U.S.C. § 1681h(e). Plaintiff's invasion-  
24 of-privacy claim against Trans Union is based on the same conduct as her FCRA claims:  
25 Trans Union's provision of her credit information in its capacity as a CRA. Doc. 37  
¶¶ 99-104. This claim is preempted under the plain language of § 1681h(e).

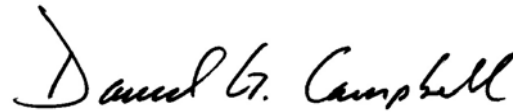
26 Plaintiff does not argue that she can satisfy the exception for claims involving  
27 "malice or willful intent to injure." Additionally, the FAC is devoid of any allegation  
28 that Trans Union had knowledge that it was disclosing her information to an unauthorized



1 user, and admits that Trans Union promptly remedied the situation when it discovered the  
2 unauthorized access.

3 **IT IS ORDERED** that Defendant Trans Union LLC's motion to dismiss  
4 (Doc. 44) is **granted**.

5 Dated this 1st day of June, 2018.

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David G. Campbell  
United States District Judge